IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 72 OF 1996

Isak Abdul Haq Patel ..... ..... ....Appellant.

(Orig.Accd.)
V/s

The State of Maharashtra ..... .... Respondents.

Mrs. V. V. Thorat, Adv. for the appellant.

Mrs.V.R. Bhosale, APP for the State.

**CORAM: V.G. PALSHIKAR**
AND
**R.C. CHAVAN, JJ.**

12th August, 2005.

**ORAL JUDGMENT: (Per Palshikar, J.)**

Being aggrieved by the judgment and order of conviction and sentence passed by the learned II Additional Sessions Judge, Satara, in Sessions Case No.223 of 1992 on 8.1.1996 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution case stated briefly is that the accused was related to the victim. P.W.8-Mumtaj Inamdar was his wife. The victim Bayana was his

mother-in-law and another victim Jamila was his wife's sister. It is the case of the prosecution that on 21.5.1992 the accused went to the house of the victim where his wife was residing along with sister-in-law and again reiterated his demand for the wife to return to the marital home. The deceased as also the wife were avoiding for some reason or the other to got to the house of the accused though they were married. On that day therefore when the accused said that I will take wife with him he was told by the victim that she would see even if the matter goes to the Court. Enraged by this act the accused whipped out a knife and stabbed his mother-in-law, when the wife intervened he stabbed her and again when sister-in-law tried to save her he stabbed her also and thereafter he stabbed all the three again and left the place. A complaint was lodged by the wife P.W.8-Mumtaj on the basis of this complaint investigation was carried out accused was arrested and prosecuted. The prosecution has examined as many as 22 witnesses to prove its case and the learned trial Judge on appreciation of the entire evidence on record came to the conclusion of guilt and convicted the accused as aforesaid. It is this order of conviction which is impugned in this appeal. Mrs.Thorat, learned counsel appearing on behalf of the appellant submitted that the independent evidence though available is not recorded, all persons who were eye witnesses are interested witnesses and adversely biased against the appellant and therefore there is no adequate evidence to come to the conclusion of guilt of the accused. She therefore submitted that the order of conviction is liable to be set aside and only in the alternate her submission is that in the event of evidence being accepted it is obviously a

case of grave and sudden provocation applied by the victim and enraged by that provocation the stabbing spree took place. There was no intention to cause death or knowledge that it would cause death. According to her therefore conviction under section 302, in any event, was unsustainable. These submissions are countered by the learned Public Prosecutor who pointed out that P.w.8-Mumtaj, P.W.14-Jamila Pathan and P.W.15-Gulshan Inamdar are injured eye witnesses. Their presence cannot be doubted, their presence in the house is natural, their deposition is proper and there is no reason to disbelieve these witnesses. She therefore claimed that the order of conviction as is made should be confirmed.

4. We have already indicated above that we have scrutinized the evidence on record with the assistance of the learned counsel for the appellant as also the learned public prosecutor. From the deposition of P.W.8-Mumtaj it will be seen that the accused did treat his wife Mumtaj with cruelty and considered her as woman of bad omen. He was enraged by her consistent visits to her parental home. She has given the narration in her deposition of occasions when she was in her marital home. Her evidence clearly spells out the motive that the accused had for assaulting the victim. The witness narrates in great details the manner in which the assault took place. She has described assault on each of them, she describes assault on herself, assault on her mother and on her sister. She has describes where the places where the stabs were given by the accused and when. She has been extensively cross examined. She has identified the muddemal articles i.e. clothes of the victim and the injured.

5. We have therefore corroborating evidence of P.W.3-Baban Adake, P.W.5-Vijay Gore, P.W.6-Salim Tamboli and P.W.7-Intaj Shaikh who have also identified these articles after they were seized. There is thus intrinsic evidence independent in nature to corroborate testimony of P.W.8-Mumtaj.

6. To similar effect is the evidence of P.W.14-Jamila who was also injured by stabs given by the accused. She has also given complete narration as to how the incident occurred and she corroborates on all material particulars with the statement made by P.w.8-Mumtaj the wife. She has also described the manner in which the injuries were caused. She has identified the articles in the Court and thus her evidence also gets independent intrinsic corroboration from testimony of four panch witnesses.

7. P.W.15-Gulshan Inamdar is another daughter of the victim who saw the incident completely and has narrated the whole incident in the Court. There is thus abundant evidence on record to prove that the accused had reason to assault the victim and injured persons. That he has done so as a result of which the victim Bayana died and victims Jamila and Mumtaj were seriously injured. In our opinion there is no reason in such circumstances to doubt the correctness of the findings that the assault was made by the accused in the manner deposed to by the eye witnesses P.W.8-Mumtaj, P.W.14-Jamila and P.W.15-Gulshan. We have therefore no hesitation to confirm the findings of the learned trial Judge that the accused did commit assault in the manner deposed to by these witnesses.

8. That takes us to the question as to whether what offence is committed by the accused. It has come on record by way of evidence of these persons

that the accused nagging in nature and was ill treating the wife Mumtaj. In view of abundant evidence on record therefore there is no reason why we should interfere with the conviction under section 498A as also the conviction under section 307 of Indian Penal Code as the injuries obviously were serious in nature. But it cannot be said that the assault was effect with the intention of causing death. The assault was made on the spur of moment having been enraged by consistent denial of victim to send the wife back to marital home. In the absence of any intention to commit murder or cause death it is difficult to sustain the conviction under sections 302 and 307. In our opinion, the interest of justice would be met if the accused is acquitted for the offence punishable under section 302 and instead convicted for the offence punishable under section 304 (II) of Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years. Similarly in so far as assault on P.W.8-Mumtaj and P.W.14-Jamila is concerned there was no intention to commit their murder but to cause them grievous hurt. Conviction under section 307 of IPC for that purpose is liable to be set aside and instead the accused is liable to be convicted under section 326 of IPC and sentenced to suffer imprisonment for three years. We order both the sentences to run concurrently. In the result, therefore, appeal partly succeeds and as such is partly allowed.

9. The accused is granted eight weeks time to surrender to bail. In the event of his failure to do so, appropriate steps to get his arrest effected be taken by the concerned police station. Appeal accordingly stands disposed of.